

LATHAM & WATKINS LLP
Kenneth M. Fitzgerald (Cal. Bar. No. 142505)
Daniel J. Lenerz (Cal. Bar. No. 226019)
600 West Broadway, Suite 1800
San Diego, California 92101-3375
Telephone: (619) 236-1234
Facsimile: (619) 696-7419

Attorneys for Plaintiff,
GOSMILE, INCORPORATED

FILED

2008 AUG 13 PM 4:26

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

08 CV 1477 WQH JMA

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

GOSMILE, INC., a Delaware corporation,

Plaintiff,

v.

CVS CAREMARK CORPORATION, a
Delaware corporation,

Defendant.

Civil Action No.

**COMPLAINT FOR: (1) FEDERAL
TRADEMARK INFRINGEMENT; (2)
COMMON LAW TRADEMARK
INFRINGEMENT; (3) FEDERAL FALSE
DESIGNATION OF ORIGIN; (4)
FEDERAL DILUTION; (5) CALIFORNIA
STATUTORY DILUTION; (6)
CALIFORNIA STATUTORY AND
COMMON LAW UNFAIR
COMPETITION; AND (7) FEDERAL
TRADE DRESS INFRINGEMENT**

DEMAND FOR JURY TRIAL

COMES NOW THE PLAINTIFF GoSmile, Inc. ("GoSmile") which for its complaint against defendant alleges as follows:

1. GoSmile owns several federally registered trademarks for the **GoSMILE** mark. This is an action for trademark infringement arising under Section 32 of the Lanham Act (15 U.S.C. § 1114), common law trademark infringement, false designation of origin arising under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), federal dilution arising under Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)), statutory dilution arising under California Business & Professions Code § 14330, statutory unfair competition arising under California Business & Professions Code § 17200 *et seq.*, unfair competition arising under the common law of the State of California and trade dress infringement arising under Section 43 of the Lanham Act (15 U.S.C. § 1125(a)).

JURISDICTION AND VENUE

2. This action is within the subject matter jurisdiction of this Court by virtue of the Lanham Act, 15 U.S.C. §§ 1121(a), 1331, and 1338(a). This Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

3. Defendant is subject to the jurisdiction of this Court pursuant to the laws of this State and the Federal Rules of Civil Procedure. Defendant participates in the promotion, advertising, and sale of unauthorized goods in this State and in this district.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to this action occurred in this district. Defendant distributes, sells, or otherwise has introduced into the stream of commerce within this judicial district, products bearing the infringing trademark.

THE PARTIES

5. Plaintiff GoSmile Incorporated ("GoSmile") is a Delaware corporation having its principal place of business at 110 E. 42nd Street, Suite 1100, New York, New York 10017.

6. Defendant CVS Caremark Corporation ("CVS") is a Delaware corporation with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895.

GENERAL ALLEGATIONS

7. GoSmile is a leading manufacturer and distributor of over-the-counter tooth whitening products, including a revolutionary, patented tooth whitener ampoule application sold under the **GoSMILE®** brand.

8. GoSmile first began using the **GoSMILE®** brand in connection with selling tooth whitening products in 2002.

9. GoSmile has used the **GoSMILE®** marks for tooth whitening products continuously since that time.

10. GoSmile is the owner of several federally registered trademarks to protect its **GoSMILE®** brand and family of trademarks used in connection with tooth whitening products.

11. GoSmile has applied for and obtained federal trademark registrations for GoSmile including U.S. Registration Numbers 3,461,582; 3,414,828; 3,389,326; 3,218,390; and 3,230,142.

12. GoSmile is the current owner of the **GoSMILE®** trademark.

13. A representative sample of GoSmile's **GoSMILE®** Tooth Whitener is shown below:



14. GoSmile markets and sells its **GoSMILE®** product line throughout the United States, including in Southern California and San Diego County.

15. GoSmile has invested heavily in advertising and promoting its **GoSMILE®** brand and products for more than six years. This advertising has consistently used the **GoSMILE** Trademarks.

1 16. In the United States, this advertising has included television commercials, print
2 publications, radio commercials, billboards, live promotions, infomercials, brochures, and
3 internet promotions.

4 17. This advertising and promotion has been continuous, and has also included
5 numerous large-scale campaigns that have stood out for consumers. Some examples include a
6 2007 Direct Response Television ("DRTV") campaign which received significant media
7 attention and coverage as well as a promotional appearance on the ABC morning chat show "The
8 View."

9 18. GoSmile also created a website (www.gosmile.com), which was launched in
10 2002, to promote and sell its **GoSMILE®** products. GoSmile also distributes point-of-sale
11 marketing materials that promote the **GoSMILE®** products at high-end retailers such as Sephora
12 and Saks Fifth Avenue.

13 19. GoSmile sells tooth whitening products under the **GoSMILE** Trademarks in both
14 the retail and commercial channels. For example, **GoSMILE®** tooth whitening products are
15 sold through the retail channel in high-end stores such as Saks Fifth Avenue, Nordstrom, Pure
16 Beauty, Planet Beauty and Sephora, as well as in numerous independent retail stores located
17 across the country.

18 20. GoSmile's **GoSMILE®** brand tooth whitening products have been tremendously
19 successful. Since 2002, GoSmile has sold millions of dollars worth of tooth whitening products
20 under the **GoSMILE** Trademarks in the United States. Much of this success is attributable to the
21 brand image represented through the distinctive trademarks of the **GoSMILE®** product line.

22 21. The products sold under the **GoSMILE** Trademarks must meet GoSmile's
23 rigorous standards of quality. GoSmile has endured significant expense to develop its patented
24 delivery system and to ensure products sold under the **GoSMILE** Trademarks adhere to high
25 quality standards.

26 22. By virtue of the substantial use, sale and promotion of the **GoSMILE®** product
27 line, the **GoSMILE** Trademarks have acquired great value as identifiers of the source of the
28 tooth whitening products and to distinguish the products from those of others.

23. By virtue of the substantial use, sale and promotion of the **GoSMILE®** product line, the **GoSMILE** Trademarks have become famous. The **GoSMILE®** product line and the **GoSMILE** Trademarks have been famous since long before CVS began its infringing activities complained of herein.

24. The distinct packaging and branding of **GoSMILE** products are widely recognized and associated with GoSmile in the eyes of consumers. The distinctive square packaging of the **GoSMILE** Tooth Whitener and the distinctive circular dots adorning **GoSMILE's** logo are particularly recognized by the public as associated with GoSMILE.

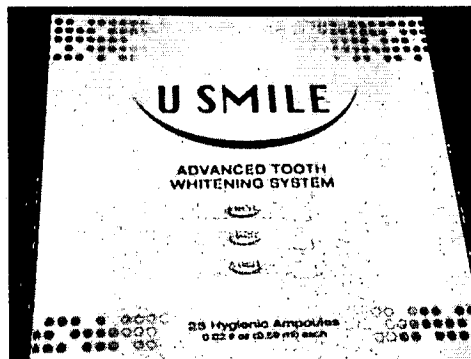
25. GoSmile and Defendant entered into negotiations to place GoSmile products in Defendant's "concept store" on or before March 25, 2008.

26. GoSmile provided to Defendant samples of GoSmile products on or about April 2, 2008.

27. The parties did not reach an agreement that would permit Defendant to distribute **GoSMILE** products through its CVS pharmacy stores. Defendant, however, decided to free-ride off the goodwill and reputation of **GoSMILE** by introducing a knockoff, confusingly similar product called "U Smile." The marks and images used on the U Smile products are confusingly similar in appearance to GoSmile's **GoSMILE** Trademarks.

28. GoSmile is informed and believes, and on that basis alleges, that Defendant manufactures the U Smile products and sells them in its Defendant pharmacy stores.

29. A representative photograph of Defendant's infringing U Smile product is shown below:



1 30. As shown in the photographs above, Defendant's U Smile tooth whitening
2 product is sold in a packaging that includes marks and images that are confusingly similar in
3 appearance to that of GoSmile's **GoSMILE** Trademarks and **GoSMILE®** Tooth Whitener
4 product line. The U Smile packaging features a square box almost identical in size and shape to
5 **GoSMILE®** Tooth Whitener; its color scheme—primarily white with a single accent color—is
6 similar to that used by the **GoSMILE®** Tooth Whitener; it uses circular dots like those used in
7 the **GoSMILE** logo; and, like the **GoSMILE®** Tooth Whitener, it includes images of ampoules.

8 31. Defendant's U Smile product also features an applicator with the same name
9 (ampoule) that is similar in size, shape and function (the ampoule's cap is removed, the ampoule
10 is squeezed firmly, and the open end of the ampoule is rubbed on the teeth) to that used by the
11 **GoSMILE®** Tooth Whitener.

12 32. Defendant's unauthorized use of GoSmile's **GoSMILE** Trademarks is intended to
13 trade upon the goodwill and substantial recognition associated with GoSmile's **GoSMILE®** line
14 of tooth whitening products.

15 33. Defendant is using GoSmile's **GoSMILE** Trademarks in an attempt to associate
16 themselves with GoSmile or otherwise trade upon GoSmile's reputation.

17 34. By virtue of the acts complained of herein, Defendant has created a likelihood of
18 injury to GoSmile's business reputation, caused a strong likelihood of consumer confusion as to
19 the source of origin or relationship of GoSmile's and Defendant's goods, and has otherwise
20 competed unfairly with GoSmile.

21 35. GoSmile is informed and believes, and on that basis alleges, that Defendant's
22 infringing acts complained of herein are willful and deliberate.

23 36. Defendant's acts complained of herein have caused GoSmile to suffer irreparable
24 injury to its business. GoSmile will suffer substantial, irreparable harm to its goodwill and
25 reputation unless Defendant is immediately enjoined from the wrongful actions complained of
26 herein.

FIRST CLAIM FOR RELIEF

Trademark Infringement Under 15 U.S.C. § 1114

37. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36 of this Complaint as though fully set forth herein.

38. GoSmile owns the registered **GoSMILE** Trademarks.

39. The **GoSMILE** Trademarks are fanciful and/or suggestive and, at a minimum, have acquired a secondary meaning by purchasers and the public.

40. GoSmile receives a tremendous amount of public recognition and critical acclaim for the products sold under the **GoSMILE** Trademarks. Through GoSmile's widespread and continuous use of the **GoSMILE** Trademarks, these marks have acquired extensive goodwill, have developed a high degree of distinctiveness, and are famous, well known and recognized as identifying goods that originate from GoSmile.

41. Defendant has used in commerce, without permission of GoSmile, marks and equivalent images that are confusingly similar to GoSmile's **GoSMILE** Trademarks. Defendant has infringed GoSmile's **GoSMILE** Trademarks by using confusingly similar phrases and images in connection with the manufacturing, distribution, selling and/or promoting Defendant's goods with the intent to unfairly compete against GoSmile, to trade upon GoSmile's reputation and goodwill by causing confusion and mistake among customers and the public and to deceive the public into believing that Defendant's goods are associated with, sponsored by or approved by GoSmile, when they are not.

42. Defendant knew of GoSmile's ownership and prior use of the **GoSMILE** Trademarks. By adopting confusingly similar marks, after failing to reach an agreement to distribute genuine **GoSMILE** products, Defendant willfully violated 15 U.S.C. § 1114.

43. Defendant's aforementioned acts have injured GoSmile and damaged GoSmile in an amount to be determined at trial.

44. By its actions, Defendant has irreparably injured GoSmile. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of GoSmile's rights, for which GoSmile has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

Common Law Trademark Infringement

45. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36 of this Complaint as though fully set forth herein.

46. By virtue of the acts complained of herein, Defendant has intentionally infringed GoSmile's **GoSMILE** Trademarks and caused a likelihood of confusion among the consuming public, thereby committing common law trademark infringement.

47. Defendant's aforementioned acts have been fraudulent, oppressive and malicious, and have injured GoSmile and damaged GoSmile in an amount to be determined at trial.

48. By its actions, Defendant has irreparably injured GoSmile. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of GoSmile's rights, for which GoSmile has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

False Designation of Origin Under 15 U.S.C. § 1125(a)

49. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36 of this Complaint as though fully set forth herein.

50. GoSmile has marketed, advertised, and promoted the **GoSMILE®** product line using the **GoSMILE** Trademarks. As a result of this marketing, advertising, and promotion, the **GoSMILE** Trademarks have come to mean and are understood to signify GoSmile products, and are one of the ways by which those goods and services are distinguished from the goods and services of others in the same and in related fields.

51. The **GoSMILE** Trademarks are distinctive and have acquired secondary meaning by purchasers and the public associating the **GoSMILE** Trademarks with GoSmile products.

52. Defendant has used in commerce, without permission of GoSmile, marks and equivalent images that are confusingly similar to GoSmile's **GoSMILE** Trademarks. Defendant has infringed GoSmile's **GoSMILE** Trademarks and created a false designation of origin by using confusingly similar phrases and equivalent images in connection with the manufacturing, distribution, selling and/or promoting Defendant's goods with the intent to unfairly compete

1 against GoSmile, to trade upon GoSmile's reputation and goodwill by causing confusion and
2 mistake among customers and the public and to deceive the public into believing that
3 Defendant's goods are associated with, sponsored by or approved by GoSmile, when they are
4 not.

5 53. Defendant had actual knowledge of GoSmile's ownership and prior use of
6 GoSmile's **GoSMILE** Trademarks, and is willfully violating 15 U.S.C. § 1125(a).

7 54. Defendant's aforementioned acts have injured GoSmile and damaged GoSmile in
8 an amount to be determined at trial.

9 55. By its actions, Defendant has irreparably injured GoSmile. Such irreparable
10 injury will continue unless Defendant is preliminarily and permanently enjoined by this Court
11 from further violation of GoSmile's rights, for which GoSmile has no adequate remedy at law.

12 **FOURTH CLAIM FOR RELIEF**

13 **Trademark Dilution Under 15 U.S.C. § 1125(c)**

14 56. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36
15 of this Complaint as though fully set forth herein.

16 57. GoSmile's **GoSMILE** Trademarks are famous and well-known within the
17 meaning of 15 U.S.C. § 1125(c), and became famous prior to the acts of Defendant complained
18 of herein.

19 58. After the **GoSMILE** Trademarks became famous and well-known, Defendant
20 misappropriated the **GoSMILE** Trademarks for its own use and commercial advantage, in
21 blatant disregard for GoSmile's rights.

22 59. Defendant's unauthorized commercial use of phrases and equivalent images to the
23 **GoSMILE** Trademarks, on or in connection with the advertisement, offering for sale, and/or sale
24 of its facilities and services, in interstate commerce, has caused and is likely to continue to cause
25 dilution of the distinctive quality of the famous **GoSMILE** Trademarks.

26 60. Defendant's infringing acts are likely to tarnish, injure, or trade upon GoSmile's
27 business, reputation and goodwill, and to deprive GoSmile of the ability to control its **GoSMILE**
28 Trademarks.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

3
4

5
6
7

8

9.0

1
2

3
4

5
6
7
8
9

20
21
22

23
24

25
26
27

SIXTH CLAIM FOR RELIEF

**Unfair Competition Under California Business & Professions Code § 17200 and California
Common Law**

70. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36 of this Complaint as though fully set forth herein.

71. By virtue of the acts complained of herein, Defendant has intentionally caused a likelihood of confusion among the public and has unfairly competed in violation of California Business & Professions Code §§ 17200, *et seq.* and the common law of California.

72. Defendant's aforementioned acts constitute unlawful, unfair, malicious or fraudulent business practices, which have injured and damaged GoSmile.

73. By its actions, Defendant has irreparably injured GoSmile. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of GoSmile's rights, for which GoSmile has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

Trade Dress Infringement Under 15 U.S.C. § 1125(a)

74. GoSmile hereby repeats, realleges, and incorporates by reference paragraphs 1-36 of this Complaint as though fully set forth herein.

75. The color design, color scheme, packaging size, packaging shape, applicator size, applicator shape, and distinctive font of the **GoSMILE** Tooth Whitener constitutes protectable trade dress which the public associates with GoSmile's high quality products.

76. By engaging in the acts alleged herein, CVS is infringing the **GoSMILE** Trade Dress, in violation of 15 U.S.C. § 1125.

77. GoSmile is informed and believes, and on that basis alleges, that by Defendant's aforementioned acts, Defendant has willfully intended to trade upon GoSmile's business, reputation, and goodwill.

78. Defendant's aforementioned acts have injured GoSmile and damaged GoSmile in an amount to be determined at trial.

79. By its actions, Defendant has irreparably injured GoSmile. Such irreparable injury will continue unless Defendant is preliminarily and permanently enjoined by this Court from further violation of GoSmile's rights, for which GoSmile has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, GoSmile prays for judgment against Defendant as follows:

1. For a temporary restraining order, preliminary and permanent injunction prohibiting Defendant, each of its agents, servants, employees, attorneys, successors and assigns, and all other persons in active concert or participation with any of them:

- a. Prohibiting them from manufacturing, importing, purchasing, distributing, selling, or offering for sale tooth whitening products using U Smile or any other mark confusingly similar to **GoSMILE**;
- b. otherwise infringing GoSmile's **GoSMILE** Trademarks;
- c. manufacturing, purchasing, distributing, selling, or offering for sale tooth whitening products bearing the trade dress currently used on U Smile products, or any other trade dress confusingly similar to that of GoSmile;
- d. requiring Defendant to deliver all devices, literature, advertising, goods and other materials bearing the infringing marks or images pursuant to 15 U.S.C. § 1118;

2. That Defendant be required to account and disgorge to GoSmile all profits derived by them by virtue of Defendant's acts complained of herein;

3. For compensatory damages according to proof;

4. For treble damages pursuant to 15 U.S.C. § 1117;

5. For reasonable costs, expenses and attorneys' fees pursuant to 15 U.S.C. § 1117;

///

///

///

///

///

1 6. For exemplary damages from Defendant pursuant to California Civil Code.

2 § 3294;

3 7. That GoSmile be awarded such other and further relief as this Court may deem
4 just.

5

Respectfully submitted,

6 Dated: August 13, 2008

LATHAM & WATKINS LLP

7

By: 

8

Kenneth M. Fitzgerald

9

Daniel J. Lenerz

10

Attorneys for Plaintiff GoSmile, Inc.

11

E-mail: kenneth.fitzgerald@lw.com

12

daniel.lenerz@lw.com

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

JURY TRIAL DEMANDED

GoSmile demands a trial by jury on all issues raised by this Complaint which are triable by jury.

Dated: August 13, 2008

LATHAM & WATKINS LLP

By: 

Kenneth M. Fitzgerald
Daniel J. Lenerz
Attorneys for Plaintiff
GoSmile, Incorporated
E-mail: kenneth.fitzgerald@lw.com
daniel.lenerz@lw.com

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GoSmile, Inc., a Delaware corporation

DEFENDANTS

CVS Caremark Corporation, a Delaware corporation

FILED

2008 AUG 13 PM 4:26

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Providence County, RI

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'08 CV 1477 WQH JMA

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kenneth M. Fitzgerald (SBN 142505)
Latham & Watkins LLP
600 West Broadway, Suite 1800
San Diego, CA 92101
619-236-1234

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Lanham Act 15 U.S.C. 1114, 15 U.S.C. 1125 (a), (c)

Brief description of cause:

trademark & trade dress infringement; trademark dilution

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 0.00

☐ CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/13/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

154317

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

CSDJS44

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

154017 - TC

**August 13, 2008
16:26:54**

Civ Fil Non-Pris

USAO #: 08CV1477

Judge.: WILLIAM Q HAYES

Amount.:

\$350.00 CK

Check#: BC425035

Total-> \$350.00

FROM: GOSMILE INC.

VS

VS CAREMARK CORP.